

110TH CONGRESS
1ST SESSION

H. R. 3038

To amend section 1848 of the Social Security Act to establish standards for growth in Medicare expenditures for physicians' services based on categories of services.

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2007

Mr. SESSIONS introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend section 1848 of the Social Security Act to establish standards for growth in Medicare expenditures for physicians' services based on categories of services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Medicare Physician Payment Reform Act of 2007”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

See. 1. Short title; table of contents.

- Sec. 2. Reforming standards for growth in Medicare expenditures for physicians' and related services.
 Sec. 3. Establishment of update service categories and expenditure measurement categories.
 Sec. 4. Establishing updates for conversion factors for update service categories.
 Sec. 5. Replacement of sustainable growth rate with service category growth rates.
 Sec. 6. Reports to Congress on excess expenditures for part B drugs and clinical diagnostic laboratory tests.

1 SEC. 2. REFORMING STANDARDS FOR GROWTH IN MEDI-
2 CARE EXPENDITURES FOR PHYSICIANS' AND
3 RELATED SERVICES.

4 (a) PROVIDING FOR SEPARATE CONVERSION FAC-
 5 TORS FOR SERVICE CATEGORIES.—Subsection (d)(1)(A)
 6 of section 1848 of the Social Security Act (42 U.S.C.
 7 1395w-4) is amended—

8 (1) by designating the sentence beginning “The
 9 conversion factor” as clause (i) with the heading
 10 “YEARS BEFORE 2009” and with appropriate inden-
 11 tation;

12 (2) by inserting “and ending with 2008” after
 13 “beginning with 2001”; and

14 (3) by adding at the end the following new
 15 clause:

16 “(ii) 2009 AND SUBSEQUENT
 17 YEARS.—For years after 2008, the conver-
 18 sion factor for an update service category
 19 (as defined in subsection (j)(5)) for a year
 20 shall be the conversion factor established

1 for such category under this subsection for
2 the previous year (or in the case of 2009,
3 the single conversion factor established
4 under this subsection for 2008), multiplied
5 by the update established under paragraph
6 (8) for such category for the year in-
7 volved.”.

8 (b) CONFORMING AMENDMENTS.—Such section is
9 further amended—

10 (1) in subsection (b)(1)(B), by inserting “appli-
11 cable” before “conversion factor”;

12 (2) in subsection (d)(1)(D)—

13 (A) by inserting “before 2009” after “for
14 a year”; and

15 (B) by adding at the end the following:
16 “For 2009 and subsequent years, the separate
17 conversion factor for anesthesia services shall
18 be determined as follows:

19 “(i) For 2009, 46 percent of the sin-
20 gle conversion factor established under this
21 subsection for other physicians’ services for
22 2008, multiplied by the update established
23 under paragraph (8) for the applicable up-
24 date service category for 2009.

“(ii) For a subsequent year, the conversion factor established under this subsection for the previous year, multiplied by the update established under paragraph (8) for the applicable update service category for the year involved.”;

(3) in subsection (d)(1)(E)—

(A) in clause (i), by inserting “(or, for publications beginning with 2009, the applicable conversion factor for each update service category)” after “conversion factor”;

(B) in clause (i), by striking “under paragraph (4)” and inserting “(for each update service category for publications beginning with 2009)”;

(C) in clause (i), by striking “under such paragraph” and inserting “(for each update service category for publications beginning with 2008)”;

(D) in clause (ii), by inserting “(or, for years beginning with 2008, the service category growth rate and, for years beginning with 2009, the applicable conversion factor, for each update service category)” after “sustainable growth rate”; and

(4) in subsection (d)(4)—

(A) in the heading, by inserting “AND
ENDING WITH 2008” after “BEGINNING WITH
2001”; and

(B) in subparagraph (A), in the matter
preceding clause (i), by inserting “and ending
with 2008” after “beginning with 2001”.

**SEC. 3. ESTABLISHMENT OF UPDATE SERVICE CATEGORIES
AND EXPENDITURE MEASUREMENT CAT-
EGORIES.**

(a) UPDATE SERVICE CATEGORIES.—Subsection (j)
of section 1848 of the Social Security Act (42 U.S.C.
1395w-4) is amended by adding at the end the following
new paragraph:

“(5) UPDATE SERVICE CATEGORIES.—Each of
the following categories of physicians’ services shall
be treated as a separate ‘update service category’:

“(A) Evaluation and management services.

“(B) Radiology services and diagnostic
tests (other than clinical diagnostic laboratory
tests).

“(C) Procedures that are subject to a 10-
day or 90-day global period (in this paragraph
referred to as ‘major procedures’), except that
the Secretary may reclassify as minor proce-

1 dures under subparagraph (E) any procedures
2 that would otherwise be included in this cat-
3 egory if the Secretary determines that such pro-
4 cedures are not major procedures.

5 “(D) Anesthesia services that are paid on
6 the basis of the separate conversion factor for
7 anesthesia services determined under subsection
8 (d)(1)(D).

9 “(E) Minor procedures and any other phy-
10 sicians’ services that are not described in a pre-
11 ceding clause.”.

12 (b) EXPENDITURE MEASUREMENT CATEGORY.—
13 Subsection (f)(4) of such section is amended by adding
14 at the end the following new subparagraph:

15 “(D) EXPENDITURE MEASUREMENT CAT-
16 EGORY.—The term ‘expenditure measurement
17 category’ means each of the update service cat-
18 egories described in subparagraphs (A) through
19 (E) of subsection (j)(5) and, only for purposes
20 of reporting, the following additional categories
21 of physicians’ services (as defined in subpara-
22 graph (A)):

23 “(i) Clinical diagnostic laboratory
24 tests.

1 “(ii) Drugs, biologicals, and radio-
 2 pharmaceuticals for which payment is
 3 made under this part.”.

4 **SEC. 4. ESTABLISHING UPDATES FOR CONVERSION FAC-**
 5 **TORS FOR UPDATE SERVICE CATEGORIES.**

6 Section 1848(d) of the Social Security Act (42 U.S.C.
 7 1395w-4(d)) is amended—

8 (1) in paragraph (4)(C)(iii), by inserting “AND
 9 ENDING WITH 2008” and “and ending with 2008”
 10 after “BEGINNING WITH 2000” and after “beginning
 11 with 2000”, respectively; and

12 (2) by adding at the end the following new
 13 paragraph:

14 “(8) UPDATES FOR UPDATE SERVICE CAT-
 15 EGORIES FOR YEARS AFTER 2008.—

16 “(A) IN GENERAL.—Unless otherwise pro-
 17 vided by law, subject to the budget neutrality
 18 factor determined by the Secretary under sub-
 19 section (c)(2)(B)(ii), the update to the conver-
 20 sion factor for an update service category (as
 21 defined in subsection (j)(5)) for a year begin-
 22 ning with 2009 is equal to the product of—

23 “(i) 1 plus the Secretary’s estimate of
 24 the percentage increase in the MEI (as de-

1 fined in section 1842(i)(3)) for the year;
2 and

3 “(ii) 1 plus the Secretary’s estimate of
4 the update adjustment factor for the up-
5 date service category for the year.

6 “(B) UPDATE ADJUSTMENT FACTORS.—

7 “(i) IN GENERAL.—For purposes of
8 subparagraph (A)(ii), subject to clause
9 (iv), the ‘update adjustment factor’ for an
10 update service category for a year is equal
11 (as estimated by the Secretary) to the sum
12 of—

13 “(I) the prior year adjustment
14 component under clause (ii) for the
15 category and year; and

16 “(II) the cumulative adjustment
17 component under clause (iii) for the
18 category and year.

19 “(ii) PRIOR YEAR ADJUSTMENT COM-
20 PONENT.—The prior year adjustment com-
21 ponent under this clause for an update
22 service category for a year is determined
23 by—

24 “(I) computing the difference
25 (which may be positive or negative)

between the amount of allowed expenditures (as determined under subparagraph (C)) for the corresponding expenditure measurement category for the preceding year (beginning with 2008), as determined under clause (v), and the amount of actual expenditures for such corresponding expenditure measurement category for that year;

“(II) dividing that difference by the amount of actual expenditures for such expenditure measurement category for that year; and

“(III) multiplying that quotient by 0.75.

“(iii) CUMULATIVE ADJUSTMENT COMPONENT.—The cumulative adjustment component under this clause for an update service category for a year is determined by—

“(I) computing the difference (which may be positive or negative) between the amount of allowed expenditures for the corresponding ex-

penditure measurement category from January 1, 2008, through the end of for the preceding year, as determined under clause (iv), and the amount of actual expenditures for such expenditure measurement category for such period;

“(II) dividing that difference by the amount of actual expenditures for such expenditure measurement category for such preceding year as increased by the service category growth rate under subsection (f) for the year for which the update adjustment factor is to be determined; and

“(III) multiplying that quotient by 0.33.

“(iv) RESTRICTION ON UPDATE ADJUSTMENT FACTORS.—An update adjustment factor determined under subparagraph (B) for an update service category for a year—

“(I) may not reduce the update by more than 0.03 or, if greater, the percentage increase in the MEI (as

defined in section 1842(i)(3)) for the year (divided by 100); and

“(II) may not increase the update by more than 0.01.

“(v) CORRESPONDING EXPENDITURE MEASUREMENT CATEGORY.—For purposes of this subparagraph, the term ‘corresponding expenditure measurement category’ means, with respect to an update service category, the expenditure measurement category (as defined in subsection (f)(4)(D)) that includes the services that are included in the update measurement category.

“(C) DETERMINATION OF ALLOWED EXPENDITURES.—

“(i) IN GENERAL.—Subject to clause (ii), the allowed expenditures for an expenditure measurement category (as defined in subsection (f)(4)(D)) for a year (beginning with 2008) is equal to—

“(I) for 2008, the actual expenditures for services in such category for 2007, increased by the service cat-

1 egory growth rate for such category
2 under subsection (f) for 2008; and

3 “(II) for a year after 2008, the
4 amount of allowed expenditures for
5 such category for the preceding year,
6 increased by the service category
7 growth rate determined under sub-
8 section (f) for the year involved.

9 “(ii) ADJUSTMENTS TO ALLOWED EX-
10 PENDITURES.—The Secretary shall, as a
11 part of the annual rule making process for
12 making changes in the fee schedule estab-
13 lished under this section, propose and im-
14 plement adjustments to allowed expendi-
15 tures by expenditure measurement cat-
16 egory to take into account changes in tech-
17 nology and practice patterns, such as
18 changes in the site of service.

19 “(iii) RECALCULATION OF ALLOWED
20 EXPENDITURES.—For purposes of deter-
21 mining the update adjustment factor for
22 an update service category for a year (be-
23 ginning with 2009), the Secretary shall re-
24 compute the allowed expenditures for pre-
25 vious periods beginning on or after Janu-

1 ary 1, 2008, consistent with subsection
2 (f)(3)(D).”.

3 **SEC. 5. REPLACEMENT OF SUSTAINABLE GROWTH RATE**
4 **WITH SERVICE CATEGORY GROWTH RATES.**

5 (a) IN GENERAL.—Section 1848(f) of the Social Se-
6 curity Act (42 U.S.C. 1395w-4(f)) is amended—

7 (1) in the heading, by inserting “AND SERVICE
8 CATEGORY GROWTH RATES” after “SUSTAINABLE
9 GROWTH RATE”;

10 (2) in paragraph (1)—

11 (A) in subparagraph (A), by striking
12 “and” at the end;

13 (B) in subparagraph (B)—

14 (i) by inserting “before 2008” after
15 “each succeeding year”, and

16 (ii) by striking the period at the end
17 and inserting “; and”; and

18 (C) by adding at the end the following new
19 subparagraph:

20 “(C) November 1 of each succeeding year
21 after 2007 the growth rate (in this subsection
22 referred to as ‘service category growth rate’) for
23 each expenditure measurement category for
24 such succeeding year and each of the preceding

1 2 years (or in the case of 2009, the preceding
2 year).”;

3 (3) in paragraph (2)—

4 (A) in the heading, by striking “RATE”
5 and inserting “RATES”;

6 (B) by redesignating subparagraphs (A)
7 through (E) and as clauses (i) through (v), re-
8 spectively, and by designating the sentence be-
9 ginning “The sustainable growth rate” as a
10 subparagraph (A) with the heading “SUSTAIN-
11 ABLE GROWTH RATE FOR PERIODS BEFORE
12 2008” and with appropriate indentation for the
13 subparagraph and its redesignated clauses;

14 (C) by inserting “and before 2008” after
15 “beginning with 2000”; and

16 (D) by adding at the end the following new
17 subparagraph:

18 “(B) SERVICE CATEGORY GROWTH RATES
19 FOR YEARS BEGINNING WITH 2008.—The service
20 category growth rate for an expenditure meas-
21 urement category for a year beginning with
22 2008 shall be equal to the product of—

23 “(i) 1 plus the Secretary’s estimate of
24 the weighted average percentage increase
25 (divided by 100) in the fees for services in

the category for the applicable period involved;

“(ii) 1 plus the Secretary’s estimate of the percentage change (divided by 100) in the average number of individuals enrolled under this part (other than Medicare Advantage plan enrollees) from the previous fiscal year to the applicable period involved;

“(iii) 1 plus—

“(I) 5.1 percentage points (divided by 100) in the case of the service category specified in subsection (j)(5)(A); and

“(II) 2.1 percentage points (divided by 100) in the case of all other categories; and

“(iv) 1 plus the Secretary’s estimate of the percentage change (divided by 100) in expenditures for services in the category in the fiscal year (compared with the previous fiscal year) which will result from changes in law and regulations, taking into account all national coverage determinations (as defined in section 1869(f)(1)(B))

1 and any local coverage determinations (as
2 defined in section 1869(f)(2)(B)) with a
3 significant impact on expenditures for phy-
4 sicians' services, but without taking into
5 account estimated changes in expenditures
6 resulting from the update adjustment fac-
7 tor determined under subsection (d)(8)(B),
8 minus 1 and multiplied by 100.”; and
9 (4) in paragraph (3)—

10 (A) in the matter preceding subparagraph
11 (A), by striking “the sustainable growth rates”
12 and inserting “and ending with 2008 and under
13 subsection (d)(8)(B) beginning with 2009, the
14 growth rates”;

15 (B) in subparagraph (C)—

16 (i) in the heading, by inserting “AND
17 BEFORE 2009” after “SUCCEEDING YEARS”;
18 and

19 (ii) in the matter before clause (i), by
20 inserting “and before 2009” after “after
21 2002”; and

22 (C) by inserting after subparagraph (C)
23 the following new subparagraph:

1 “(D) FOR 2009 AND SUCCEEDING YEARS.—

2 For purposes of calculations for a year after
3 2008—

4 “(i) the service category growth rates
5 for that year and the preceding 2 years (or
6 in the case of 2009, the preceding year)
7 shall be determined on the basis of the
8 best data available to the Secretary as of
9 September 1 of the year preceding the year
10 for which the calculation is made; and

11 “(ii) the service category growth rates
12 for any year before a year described in
13 clause (i) shall be the rates most recently
14 determined for that year under this sub-
15 section.”.

16 (b) CONFORMING CHANGE; NO ADMINISTRATIVE OR
17 JUDICIAL REVIEW.—Section 1848(i)(1)(C) of such Act
18 (42 U.S.C. 1395w-4(i)(1)(C)) is amended by inserting “or
19 service category growth rates” after “sustainable growth
20 rates”.

21 **SEC. 6. REPORTS TO CONGRESS ON EXCESS EXPENDI-**
22 **TURES FOR PART B DRUGS AND CLINICAL DI-**
23 **AGNOSTIC LABORATORY TESTS.**

24 (a) REPORTING REQUIREMENT.—The Secretary of
25 Health and Human Services shall report to the appro-



1 priate committees of the Congress not later than 3 months
2 after the end of any year in which the Secretary deter-
3 mines that actual expenditures exceeded allowed expendi-
4 tures for such year and the preceding year for either of
5 the expenditure measurement categories described in
6 clause (i) or (ii) of section 1848(f)(4)(D) of the Social Se-
7 curity Act, as added by section 3(b).

8 (b) RECOMMENDATIONS.—The report submitted
9 under subsection (a) shall include an analysis of the rea-
10 sons for such excess expenditures and recommendations
11 for addressing them in the future.

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